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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,837	06/25/2001	Anand V. Gumaste	MICRODOSE 00.01	9414
27667	7590	11/15/2005	EXAMINER	
HAYES, SOLOWAY P.C. 3450 E. SUNRISE DRIVE, SUITE 140 TUCSON, AZ 85718			PATEL, NIHIR B	
			ART UNIT	PAPER NUMBER
			3743	
DATE MAILED: 11/15/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/888,837	Applicant(s) GUMASTE, ANAND V.	
	Examiner Nihir Patel	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on September 6th, 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3 and 8-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed on September 6th, 2005 have been fully considered but they are not persuasive. The applicant argues that Abrams does not teach or disclose a top layer of film being punctured, and no puncture holes formed which could act as filters to prevent ejection of oversize particles. The examiner disagrees. Abrams does provide a top layer film (**see column 8 lines 40-50; Abrams states "...A release film 221 (tope layer) covers and seals wells 220) being punctured (see column 7 lines 45-55), and no puncture holes formed (see column 7 lines 45-55).** Inherently the punctured holes of the patent could act as filters to prevent ejection of oversize particles.

The applicant also argues that Casper does not suggest or teach a vibrator, or of controlling particle size by breaking up the particles by vibration, and filtering the particles through the puncture holes. The examiner agrees with the applicant's arguments however, the Casper reference is not relied for a vibrator, or of controlling particle size by breaking up the particles by vibration, and filtering the particles through the puncture holes. Casper is relied on for providing a coil tape that is flexible (**see column 5 lines 1-15**). Abrams reference is relied for a vibrator, or of controlling particle size by breaking up the particles by vibration, and filtering the particles through the puncture holes.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims **1, 3, 8 and 13 through 15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrams et al. (US 5,694,920) in view of Casper et al. (US 6,209,538).

Referring to claims 1, 3, 8 and 13 through 15, Abrams discloses the applicant's invention as claimed with the exception of disclosing a coil tape that is flexible. Casper discloses a dry powder medicament inhalator that does provide a coil tape that is flexible (**see column 5 lines 1-15**). Therefore it would have been obvious to modify Abrams invention by providing a coil tape that is flexible as taught by Casper in order to make the delivery process more smother. The applicant has not established criticality on the design structure (flexible) of the tape in the specification and therefore it would have been obvious to one of the ordinary skill of the art to design the tape to be flexible as taught by the applicant and Casper or semi-flexible.

Claim **9** is rejected under 35 U.S.C. 103(a) as being unpatentable over Abrams et al. (US 5,694,920) in view of Pera (US 5,944,012). **Referring to claim 9**, Abrams discloses the applicant's invention as claimed with the exception of disclosing a material that comprises a vitamin. Pera discloses a method of dispensing antioxidant vitamin by inhalation that does disclose a material that comprises a vitamin (**background of the invention**). Therefore it would be obvious to modify Abrams 's invention by providing a material that comprises a vitamin as taught by Pera in order to provide proper treatment to the patient.

Claims **10 and 11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrams et al. (US 5,694,920) in view of Hendricks 9US 5,699,789). **Referring to claims 10 and 11**, Abrams discloses the applicant's invention as claimed with the exception of disclosing that the material comprises a hormone or a steroid. Hendricks discloses a dry powder inhaler that does disclose a material that comprises a hormone or a steroid. Therefore it would have been obvious to modify Abrams's invention by providing a material that comprises a hormone or a steroid as taught by Hendricks in order to provide the patient with the proper treatment.

Claim **12** is rejected under 35 U.S.C. 103(a) as being unpatentable over Abrams et al. (US 6,029,663) in view of Shyjan (US 6,312,909). **Referring to claim 12**, Abrams discloses the applicant's invention as claimed with the exception of disclosing a material that comprises a bioactive material. Shyjan discloses a composition and methods for the diagnosis prevention and treatment of tumor progression that does provide a material that comprises a bioactive material. Therefore it would have been obvious to modify Abrams's invention by providing a material that comprises a bioactive material as taught by Shyjan in order to provide a proper treatment to the patient.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (703)306-3463. The examiner can normally be reached on 7:30 to 4:30 every other fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nihir Patel
November 3rd, 2005

Henry Bennett
Supervisory Patent Examiner
Group 3700